



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Norco Apartments Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNDCT, OLC, FFT**

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy originally began on October 1, 2014. The landlord assumed this tenancy in 2021 when they took over from the previous property owner.

The parties agree that there was an error in the Notice of Rent Increase dated September 2018. The Notice used an incorrect base rent of \$855.00 which was increased by \$20.00 to \$875.00 as of January 1, 2019. The parties agree that the actual original rent was \$845.00 and that the tenant has been overpaying \$10.00 for a period of 34 months from January 1, 2019 to October 2021. The tenant submits that the total amount of the overpayment is \$340.00. They had claimed for projected overpayment to the date of the hearing in their monetary worksheet but confirmed the actual amount is \$340.00.

The landlord submits that the error was caused by the previous landlord and while they do not dispute that there has been overpayments submit that they are not liable for anything more than the period they had control of the suite.

The tenant also seeks the cost of registered mail, printing and photocopying to pursue the present application and a \$1,000.00 award for “missing work, PTSD, anxiety due to yelling, screaming, insulting”. The tenant submits that they have incurred damages from the landlord’s conduct.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the parties that there has been an overpayment of rent for this tenancy. The parties both agree that the tenant has been paying \$10.00 extra each month from January 2019 to October 2021.

While the landlord submits that they should not be held accountable for overpayments made prior to their taking over the property I do not find the landlord's argument to be persuasive. The landlord assumed the tenancy, including all assets and liabilities. I find the landlord can not shield themselves from liability by claiming that they did not review the rental ledger when taking over this tenancy. I find the landlord responsible for the overpayments made throughout this tenancy. I accept the undisputed evidence of the parties that the tenant overpaid by \$10.00 for a period of 34 months and issue a monetary award in the amount of \$340.00 accordingly.

I find insufficient evidence in support of the balance of the tenant's claim. I find the tenant's testimony about their interactions with the landlord to be insufficient to demonstrate that there has been any breach that would give rise to a monetary award. I also find little evidence to show that there has been any damage or losses incurred. I find that the tenant has not met their evidentiary burden and consequently dismiss this portion of their claim.

I find the cost of mail, photocopying or printing are not damages arising out of a breach on the part of the landlord but simply the costs of pursuing an application for dispute resolution. Accordingly, I decline to issue an award for recovery of these amounts.

As the tenant was partially successful in their application I find it appropriate to issue an award for recovery of \$50.00, half of the fees for filing of this application.

As this tenancy is continuing I allow the tenant to satisfy their monetary award by making a one-time deduction of \$390.00 from their next scheduled rent payment.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$390.00, representing recovery of overpaid rent and half of the filing fee. The tenant may satisfy this award by making a one-time deduction of \$390.00 from their next scheduled rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 14, 2022

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Residential Tenancy Branch